

Credit Card Class Actions Opt-Out Administrator  
P.O. Box 507 STN B  
Ottawa ON K1P 5P6

## MERCHANT CREDIT CARD FEES SETTLEMENT NOTICE

### **Are you a merchant in Canada who accepted Visa or Mastercard credit cards?**

If you are a merchant in Canada who accepted Visa or Mastercard credit cards as payment for goods or services after March 23, 2001, your rights could be affected by a proposed national class action settlement with:

Royal Bank of Canada, The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, Bank of Montreal and The Bank of Nova Scotia

### **The Credit Card Actions**

Class action lawsuits were commenced in British Columbia (the “BC Action”), Alberta, Saskatchewan, Quebec (the “QC Action”) and Ontario (collectively, the “Credit Card Actions”) against Visa Canada Corporation (“Visa”), Mastercard International Incorporated (“Mastercard”) and certain banks which issue credit cards (“Issuing Banks”) alleging each of Visa and Mastercard conspired with their Issuing Banks and acquirers in setting the amount of interchange fees and imposing rules restricting merchants’ ability to surcharge or refuse higher cost Visa and Mastercard credit cards. The BC Action and the QC Action were certified/authorized as class proceedings.

### **The Prior Settlements**

There have been a number of partial settlements achieved to date. The Courts have previously approved settlement agreements with Bank of America, Citigroup, Capital One, Desjardins, National Bank, Visa and Mastercard (the “Prior Settlements”). The Prior Settlements have a total value of \$68,530,000 plus accrued interest. Information about the Prior Settlements is available at [www.CreditCardSettlements.ca](http://www.CreditCardSettlements.ca). The net proceeds from the Prior Settlements have been held by the Class Lawyers pending resolution of all remaining claims in the Credit Card Actions.

### **The New Settlement**

Although Royal Bank of Canada, The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, Bank of Montreal and The Bank of Nova Scotia (collectively, the “Settling Defendants”) deny liability, they have collectively entered into a new national settlement with the plaintiffs (the “Proposed Settlement”), subject to approval of the Courts. The Settling Defendants will collectively pay a total of CAD \$120 million (the “Settlement Amount”) for the benefit of the Settlement Class Members in exchange for the dismissal of the Credit Card Actions and other related litigation, and a full release of all claims advanced against each of them and their related entities, including future claims relating to continuing acts or practices that occurred prior to or following the commencement of the Credit Card Actions. The Proposed Settlement is

not an admission of liability on the part of the Settling Defendants who deny the allegations, nor has there been any finding of liability by the Courts against them.

If the Proposed Settlement is approved, the Class Lawyers will ask the Courts to approve the deduction of certain amounts from the Settlement Amount, including costs incurred to distribute this notice and process opt-out requests, comments and objections, a counsel fee of up to 30% of the recovered amounts (subject to approval by the Courts), and disbursements.

### **Distribution of Net Settlement Proceeds**

If the Proposed Settlement is approved, it will bring the Credit Card Actions to an end and will allow the distribution of the net settlement proceeds remaining after deduction of all court-approved fees, costs and expenses in respect of the Prior Settlements and the Proposed Settlement (collectively, the “Net Settlement Proceeds”). It is estimated that there will be approximately \$145,000,000 available for distribution to Settlement Class Members.

At the Settlement Approval Hearing, the Class Lawyers will also present a Distribution Plan for the distribution of the Net Settlement Proceeds. The Distribution Plan is subject to court approval. A copy of the Distribution Plan will be posted at [www.CreditCardSettlements.ca](http://www.CreditCardSettlements.ca).

### **Certification/Authorization as Class Proceedings for Settlement Purposes**

The BC Action and the QC Action were already certified / authorized to proceed as class actions by the Courts, but with some limitations. In order to implement the Proposed Settlement, the Courts have, for settlement purposes only, certified / authorized all of the Credit Card Actions as class proceedings on broader terms against the Settling Defendants.

### **Who Are The Settlement Class Members?**

The court-approved definition of “Settlement Class Member” sets out who can participate in and is bound by the Proposed Settlement, including the release of claims. You are a Settlement Class Member if you accept or accepted Visa credit cards and/or Mastercard credit cards as payment for goods or services and incurred merchant discount fees, including interchange fees, in Canada since March 23, 2001.

The Settlement Class includes Quebec Settlement Class Members. Quebec Settlement Class Members are Quebec resident persons and partnerships who accepted Visa and/or Mastercard credit cards as payment for goods or services and incurred merchant discount fees, including interchange fees, at any time since March 23, 2001. As noted below, Quebec Settlement Class Members have different participation options.

Any legal persons established for a private interest and any partnership resident in Quebec, which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment, and any legal persons established for a public interest resident in Quebec are not Quebec Settlement Class Members, but are Settlement Class Members in Ontario.

All Settlement Class Members are affected by this notice.

### **Settlement Approval Hearing**

A hearing to consider approval of the Proposed Settlement, the Distribution Plan, a counsel fee of up to 30% of the recovered amounts, and disbursements and other expenses payable from the Settlement Amount will take place by video link as directed by the Courts on December 6, 2021 at the following times:

- 9:00a.m. PST (British Columbia Supreme Court, Vancouver)
- 10:00 a.m. MST (Court of Queen’s Bench of Alberta, Edmonton)
- 11:00 a.m. CST (Court of Queen’s Bench for Saskatchewan, Regina)
- 12:00p.m. EST (Quebec Superior Court, Montreal)
- 12:00 p.m. EST (Ontario Superior Court of Justice, Toronto).

Anyone can attend the hearing. If you want to attend, please visit [www.creditcardsettlements.ca](http://www.creditcardsettlements.ca) for a link to the hearing.

If you wish to provide comment on or objection to the Proposed Settlement, Distribution Plan, or the lawyers’ fees and disbursements, either in writing or by speaking to the Court at the hearing, you must contact Epiq\* by **December 5, 2021**. Written comments or objections will be provided to the Court for consideration in whether to approve or reject the Proposed Settlement and Distribution Plan.

### **Participating in the Proposed Settlement or Credit Card Actions (No Action Needed)**

Settlement Class Members who wish to participate in the approved settlements and in the Credit Card Actions do not need to do anything at this time, although we encourage them to identify themselves as a Settlement Class Member (subject to future verification of eligibility) so that they receive direct notice of any important developments, including the approval of the Distribution Plan and when to make a claim for a share of the settlement benefits.

### **Opting Out of the Credit Card Actions or Proposed Settlement (Requires Action)**

Merchants who do not wish to participate in the Proposed Settlement have to opt out (exclude themselves).

The Courts in Quebec and in the rest of Canada have approved different rules regarding opting out of the Credit Card Actions and settlements. In practice, Quebec Settlement Class Members have an opportunity to opt out in connection with each round of settlement approval, whereas other Settlement Class Members in the rest of Canada are given a single opportunity to decide whether to opt out. In all cases, once a Settlement Class Member elects to opt out, they are out for good and cannot opt back into the Credit Card Actions.

For most Settlement Class Members, the right to opt out of the Credit Card Actions was previously provided in connection with the approval of some of the Prior Settlements and has now expired.

The only Settlement Class Members who can elect to opt out at this time are:

- Quebec Settlement Class Members; and
- Persons who only began accepting Visa and/or Mastercard credit cards after May 31, 2018 (the “New Merchants”).

The deadline for Quebec Settlement Class Members and New Merchants to opt out is December 5, 2021. Regardless, all Settlement Class Members who do not opt out can still make their views known about the Proposed Settlement as set out above by delivery of a written comment or objection to Epiq\* by December 5, 2021, or by attending the hearing.

### **Consequences of Opting Out**

(a) for Quebec Settlement Class Members:  
By opting out, you are choosing not to take part in the Proposed Settlement.

Quebec Settlement Class Members who opt out will not be bound by the Proposed Settlement or the release in that settlement, but will also not be entitled to share in any of the proceeds that will become available to merchants as part of that settlement.

Quebec Settlement Class Members who opt out of the Proposed Settlement will remain bound by the Prior Settlements and the releases given to other parties in those settlements, and will be entitled to share in the proceeds that may become available to merchants as part of those settlements.

(b) for New Merchants:

By opting out, you are choosing not to take part in any of the Prior Settlements or in the Proposed Settlement.

New Merchants who opt out will not be bound by the Prior Settlements and the Proposed Settlement or the releases in those settlements but will also not be entitled to share in any of the proceeds that will become available to merchants as part of those settlements.

**Consequences of NOT Opting Out**

(a) for Quebec Settlement Class Members

Quebec Settlement Class Members who do not opt out will be bound by the Proposed Settlement and the release in same and will be entitled to share in the proceeds that will become available to merchants as part of that settlement.

(b) for New Merchants

New Merchants who do not opt out will be bound by the Prior Settlements and the Proposed Settlement, and the releases in them, and will be entitled to share in any of the proceeds that will become available to merchants as part of those settlements.

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FOR MORE INFORMATION on the status of the approval hearing, how to opt out of the Credit Card Actions, comment or object to the Proposed Settlement, Distribution Plan, or the lawyers' fees and disbursements, or to view any of the settlements and a list of other definitions that apply to this Notice, visit [www.CreditCardSettlements.ca](http://www.CreditCardSettlements.ca), which will be periodically updated with information on the approval process of the Proposed Settlement, the Distribution Plan, and on the status of the Credit Card Actions.

\*For communications with Epiq, the Opt-Out Administrator, call 1 (877) 283-6548/TTY: 1 (877) 627-7027, email [info@CreditCardSettlements.ca](mailto:info@CreditCardSettlements.ca), fax 1-866-262-0816 or write to P.O. Box 507 STN B Ottawa ON K1P 5P6.

CLASS LAWYERS can be reached at [lawyer@creditcardsettlements.ca](mailto:lawyer@creditcardsettlements.ca) and are:

- BC, at (604) 654-2999 (Luciana P. Brasil)
- Camp Fiorante Mathews Mogerman LLP at (604) 689-7555 (David Jones)
- Consumer Law Group Inc. (for Quebec residents) at 1-888-909-7863 x2 (Jeff Orenstein)

This notice is approved by the Courts.